

ROBERT ROSS FOGG, ESQ., LL.M.

Attorney and Counselor at Law

69 Delaware Ave., Suite 600
Buffalo, New York 14202
(716) 853-FOGG (3644)
Fax: (716) 852-6782

May 13, 2013

Honorable Richard J. Arcara, U.S.D.J.
United States District Court
Western District of New York
2 Niagara Square
Buffalo, New York 14202-3350

RE: *Ceglia v. Holder, et al.*
Case No.: 1:13-cv-00256 (RJA)

Dear Judge Arcara:

During oral arguments at the recent hearing on Plaintiff's Motion for a Preliminary Injunction, Plaintiff argued that Mr. Ceglia and his attorneys could be subject to prosecution merely by filing and serving papers in the civil case *Ceglia v. Zuckerberg, et al.*, which is pending before Your Honor. Upon hearing this argument, Your Honor asked if such threats were contained in the record and, if so, where. This letter is intended to more specifically answer that question.

Plaintiff respectfully directs the Court's attention to Exhibit B to Plaintiff's Memorandum in Support of a TRO filed as Document # 3. Exhibit B is a copy of the Government's Memorandum of Law in Opposition to Defendant Ceglia's Motion to Transfer Venue of the criminal case from Manhattan to Buffalo. In the Memorandum, the U.S. Attorney for the Southern District of New York stated:

Not only did the ongoing fraud continue in Manhattan when Ceglia's New York City-based attorneys served certain legal documents, including the

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amended complaint, on the Civil Defendant's counsel in, among other places, Washington, D.C. but each and every affirmative act in furtherance of the ongoing fraud was completed in New York when, among other things, *counsel for the Civil Defendants were served by Ceglia's attorneys with the various legal documents that he has employed to further his fraudulent scheme to defraud California-based Zuckerberg and Facebook, Inc.*

Doc. # 3 (p. 62 of 99) Exhibit B (p. 11, ¶ 22) (underscores in original; italics added).¹

It is the wrongful attempt to criminalize Mr. Ceglia's resort to the courts, as well as the threat to criminalize his lawyers' representation of him in *Ceglia v. Zuckerberg* that has chilled his constitutional right to litigate in *this* court. *United States v. Pendergraft*, 297 F.3d 1198, 1208 (11th Cir. 2002) ("A number of courts have considered whether serving litigation documents by mail can constitute mail fraud, and all have rejected that possibility.") That is the irreparable harm which, we respectfully submit, entitles him to a preliminary injunction.

Thank you for Your Honor's attention.

Respectfully yours,

s/ Robert Ross Fogg
Robert Ross Fogg
Attorneys for Plaintiff, Paul Ceglia
Joseph Alioto
Paul Argentieri
Gil Messina

cc: Defendant Counsel of Record via ECF

¹ This passage is also quoted in plaintiff's Verified Complaint, ¶ 22 (Doc. # 1, p. 7 of 12).